

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

ANTOINETTE BANKS,  
 Plaintiff,

vs.

DIRECT LOANS SERVICING CENTER,  
 Defendant.

2:12-cv-01163-PMP-CWH

**ORDER**

This matter is before the Court on Plaintiff's Application to Proceed in Forma Pauperis (#3) and Plaintiff's Amended Complaint (#4), filed on September 12, 2012.

**I. Application to Proceed In Forma Pauperis**

Plaintiff's initial application was denied because it was incomplete. The renewed application (#3) is complete. Plaintiff has submitted the affidavit required by § 1915(a) showing an inability to prepay fees and costs or give security for them. Accordingly, the request to proceed in forma pauperis will be granted pursuant to 28 U.S.C. § 1915(a). The court will now review Plaintiff's Amended Complaint.

**II. Screening the Complaint**

Upon granting a request to proceed *in forma pauperis*, a court must additionally screen a complaint pursuant to 28 U.S.C. § 1915(e). Specifically, federal courts are given the authority to dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks monetary relief from a Defendant/Third Party Plaintiff who is immune from such relief. 28 U.S.C. § 1915(e)(2). A complaint, or portion thereof, should be dismissed for failure to state a claim upon which relief may be granted "if it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claims that would entitle him to relief." *Buckey v. Los Angeles*, 968 F.2d 791, 794 (9th Cir. 1992). A complaint may be dismissed as frivolous if it is premised on a

1 nonexistent legal interest or delusional factual scenario. *Neitzke v. Williams*, 490 U.S. 319, 327–28  
2 (1989). Moreover, “a finding of factual frivolousness is appropriate when the facts alleged rise to the  
3 level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts  
4 available to contradict them.” *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). When a court dismisses a  
5 complaint under § 1915(e), the plaintiff should be given leave to amend the complaint with directions  
6 as to how to cure its deficiencies, unless it is clear from the face of the complaint that the deficiencies  
7 could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

8 **A. Federal Question Jurisdiction**

9 Federal courts are courts of limited jurisdiction. Pursuant to 28 U.S.C. § 1331, federal district  
10 courts have original jurisdiction over “all civil actions arising under the Constitution, laws, or treaties of  
11 the United States.” “A case ‘arises under’ federal law either where federal law creates the cause of  
12 action or ‘where the vindication of a right under state law necessarily turn[s] on some construction of  
13 federal law.’” *Republican Party of Guam v. Gutierrez*, 277 F.3d 1086, 1088-89 (9th Cir. 2002)  
14 (quoting *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 8-9 (1983)). The  
15 presence or absence of federal-question jurisdiction is governed by the “well-pleaded complaint rule.”  
16 *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Under the well-pleaded complaint rule,  
17 “federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s  
18 properly pleaded complaint.” *Id.* Here, Plaintiff has not alleged a violation of “the Constitution, laws,  
19 or treaties of the United States.” Indeed, Plaintiff has not cited any law under which she wishes to  
20 proceed. Accordingly, the Court finds there is no federal jurisdiction because a federal question is not  
21 present on the face of the Plaintiff’s complaint.

22 **B. Diversity Jurisdiction**

23 Pursuant to 28 U.S.C. § 1332, federal district courts have original jurisdiction over civil actions  
24 in diversity cases “where the matter in controversy exceeds the sum or value of \$75,000” and where the  
25 matter is between “citizens of different states.” Plaintiff appears to reside in Las Vegas. Unfortunately,  
26 Plaintiff has not indicated the citizenship of the Defendant in her complaint. Moreover, it does not  
27 appear the amount in controversy exceeds \$75,000. Thus, the Court finds that Plaintiff has not  
28 demonstrated that diversity of citizenship could provide the basis for subject matter jurisdiction.

1 Accordingly,

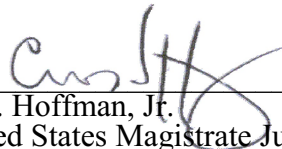
2 **IT IS HEREBY ORDERED** that Plaintiff's Application to Proceed In Forma Pauperis (#3) is  
3 **granted**. Plaintiff shall not be required to pre-pay the full filing fee of three hundred fifty dollars  
4 (\$350.00).

5 **IT IS FURTHER ORDERED** that the movant herein is permitted to maintain this action to  
6 conclusion without the necessity of prepayment of any additional fees or costs or the giving of security  
7 therefor. This Order granting leave to proceed *in forma pauperis* shall not extend to the issuance of  
8 subpoenas at government expense.

9 **IT IS FURTHER ORDERED** that the Clerk of the Court shall file the Complaint (#1-1).

10 **IT IS FURTHER ORDERED** that Plaintiff's Amended Complaint (#4) is **dismissed without**  
11 **prejudice**. Plaintiff shall have until **January 10, 2013** to file an amended complaint. Failure to do so  
12 will result in a recommendation that his case be dismissed with prejudice.

13 DATED this 10th day of December, 2012.

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16 C.W. Hoffman, Jr.  
17 United States Magistrate Judge  
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